



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **202004011**  
Release Date: 1/24/2020  
UIL Number: 501.03-30; 501.36-01

Date: October 29, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear \_\_\_\_\_ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Date: October June 18, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

D = Date  
E = State  
x percent =  
y percent =

**UIL:**

501.03-30  
501.36-01

Dear :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

**Issue:**

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

**Facts:**

You were incorporated as a nonprofit corporation on D in State of E.

Your Articles of Incorporation refer to an attachment for your purpose. The attachment states:

Due to the fact that (we) will be a Non-Profit and be just as qualified as (our) competitors, (we) will attract people who are able to pay the normal rate at a shop because (we) will have an immediate sense of trust. For the customers who are able to pay competitive rates, we will use those profits against our higher margins to a self-sufficient Non-Profit while still being able to help those who need it.

The attachment goes on to state: "(We are) not just an average mechanic shop. Running as a Non-Profit will set (our) business apart from any other mechanic shops while also being able to offer services to parts of our society that were previously unable to get the extra support they needed." Your Articles also state that in the event of a voluntary dissolution, all assets will be sold and the money will go to another non-profit.

Your only activity is the operation of an automobile general repair and service shop. You will provide the service of doing automobile maintenance and repair for the general public. Your services will be conducted by a mechanic who will be employed by you. You state the activity that will further your exempt purpose is doing the automobile repair. The general public needing the vehicle repair work done will bring their vehicle to your shop. Once the mechanic has diagnosed the issue the vehicle is having, you will give the customer a quote of the repair work. The amount the customer pays will be dependent on a sliding scale fee based on the Federal Poverty Guideline (FPG). Depending on the household's yearly income relative to the FPG, the customer may receive a discount. This discount can be up to x percent of the FPG. This will make the amount due for the work decrease. The lower the income of the household, the lower the amount that the customer will owe on the vehicle service. If the household income does not fall in the relative FPG threshold, the customer will not pay more than a normal market rate for the services. You will continually evaluate the rate of the scale to ensure your customers are receiving fair prices based on the current market. You state you will only be a maintenance and service provider and that y percent of your time will be allocated to providing repair services to the public. Because the final bill to the customer is dependent on income, the amount paid to you will vary for every job. You will be funded by the amount that is paid by each customer as well as donations from the public.

Based on your response to our additional information request, less than % of the population in your county will qualify for free services, about % are in income brackets where they will receive a discount ranging from %- %, and the remaining - will not receive a discount and will be charged the normal market rate. You state that you may restrict discounted services if you need income to continue and there is already a full paying customer waiting to be scheduled. You also state that if there is shop time that has not been scheduled, and no full paying customer waiting, then there will be no restrictions regardless of financial standing. You state that like most automotive repair shops you will primarily operate on a "first come, first served" basis.

In your response regarding your fees, you state that all customers will pay for the parts that are needed because it is a fixed cost incurred by you.

You assert you will advertise and reach out in multiple ways to ensure you touch everyone who will utilize the auto repair shop. You will advertise through local radio stations and paid online advertisements. You also maintain you will work with local agencies to reach low-income customers.

You state there are more than for-profit auto repair shops in the same area that you will be operating. You assert all the current shops in the area operate on the same type of fee system, but none offer any large discounted rates. You declare that you plan to create a shop that is more trustworthy and helpful than the other repair shops. You will cater to the same customers who are paying full price for their vehicle repairs.

You state any excess revenues will be used to grow your ability to help more families such as creating more programs in your shop including educational classes for basic maintenance. You also assert you will use excess revenues to try expanding into another location which will utilize your services.

Your website states that being a not-for-profit auto repair company gives you the unique ability to focus on your customers unlike any other shop and that you offer affordable rates to all customers at a business you can trust.

**Law:**

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury. Regulation Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes lessening of the burdens of government.

Treas. Reg. Section 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of Section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

In Rev. Rul. 73-127, 1973-1 C.B. 221, the Service held that an organization that operated a cut-price retail grocery outlet and allocated a small portion of its earnings to provide on-the-job training to hard-core unemployed did not qualify for exemption. The corporation was formed to operate a retail grocery store to sell food to residents of a poverty area at prices substantially lower than those charged by competing grocery stores, to provide free grocery delivery service to residents who need it, to participate in the Federal food stamp program, and to provide job training for unemployed residents. The organization's purpose of providing job training for hard-core unemployed was charitable and educational within the meaning of the common law concept of charity; however, the organization's purpose of operating a retail grocery store, where food was sold to residents of a poverty area at low prices, was not recognized as a charitable purpose under the basic common law concept of charity. The ruling went on to say the operation of the store and the operation of the training program are two distinct purposes, that was, ends or objects sought to be accomplished by the organization through use of its resources; and since the former purpose was not a recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), *aff'd*, 846 F. 2d 78 (Fed. Cir.) *cert. denied*, 488 U.S. 907- (1988), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under Section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in Section 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7<sup>th</sup> Cir. 1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under Section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. As the court stated:

-Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations.-

In Asmark Institute, Inc. v. Commissioner, T.C. Memo. 2011-20, *aff'd*, 486 Fed. Appx. 566 (6<sup>th</sup> Cir. 2012) the appeals court upheld the Tax Court decision that the organization was not entitled to exemption under Section 501(c)(3) because its operations were commercial in nature rather than charitable. The court found that the appellant's largely fee-based business plan and its competition within a for-profit market were also strong evidence of the predominance of their nonexempt commercial purposes. The court further held that the sale of services is commonly considered to be a nonexempt commercial purpose.

### **Application of law**

You are not operated for exempt purposes consistent with Section 501(c)(3) of the Code. Your activities consist of operating an automobile general repair and service shop. In addition, your website appears similar to that of a for-profit auto repair shop. You operate in a manner consistent and in competition with other shops.

You do not meet the provisions stated in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) because your organizational document does not limit your purposes to one or more exempt purposes and your dissolution does not ensure that your assets will be distributed for one or more exempt purposes described in Section 501(c)(3) of the Code.

You are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your primary activity is the operation of an automobile general repair and service shop providing services to the general public. As provided in Treas. Reg. Section 1.501(c)(3)-1(d)(2), you have not established that your operations accomplish exclusively charitable purposes.

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(e)(1) because your primary purpose is the operation of an automobile general repair and service shop which is not in furtherance of exempt purposes.

You are similar to the organization described in Rev. Rul. 73-127 that was found not to qualify for exemption from income tax under Section 501(c)(3) of the Code as the purpose of its operating a retail grocery store, where food is sold to residents of a poverty area at low prices, is not recognized as a charitable purpose under the basic common law concept of charity and within the meaning of Section 501(c)(3) of the Code.

As held in Better Business Bureau of Washington, D.C., Inc. v. United States, a single non-exempt purpose, if substantial, will preclude tax exemption under Section 501(c)(3) of the Code. Your automobile general repair and service operation, a substantial part of your activities, is a non-exempt purpose; therefore, you are not operating exclusively for an exempt purpose as described in Section 501(c)(3).

You are like the organizations described in Easter House v. U.S., Living Faith, Inc. v. Commissioner, and Asmark Institute, Inc. v. Commissioner because you are operating for a substantial nonexempt commercial purpose rather than for a tax-exempt purpose. You are open to the general public during regular business hours and provide the same services as for-profit competitors. Therefore, you conduct the activity in a manner similar to for-profit businesses and are in direct competition with such businesses.

In Airlie Foundation v. Commissioner, the court applied a commerciality doctrine to assess the factors that were more indicative of operating a business. These included a failure to provide services at substantially below cost, pricing policies, competition with other non-exempt commercial entities, and use of commercial methods such as advertising. Your customers, competitors, and scope of services strongly correlate with those of a commercial enterprise.

### **Conclusion**

Based on the information submitted, you have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and the related income

tax regulations. Therefore, based on the administrative record, you fail to qualify for exemption under Section 501(c)(3).

### **If you agree**

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

### **If you don't agree**

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

**For an officer, director, trustee, or other official who is authorized to sign for the organization:**

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

### **Where to send your protest**

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:



U.S. mail:

Internal Revenue Service  
EO Determinations Quality Assurance  
Mail Stop 6403  
P.O. Box 2508  
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Mail Stop 6403  
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

**Contacting the Taxpayer Advocate Service**

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

cc: